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MONTANA EIGHTH JUDICIAL DISTRICT COURT
CASCADE COUNTY

STATE OF MONTANA,

Plaintiff,

vs.

KENNETH JAMES HATZENBELLER,

Defendant.

Cause No.

DDC - 16 - 319

STATE'S MOTION FOR LEAVE
TO FILE INFORMATION AND
SUPPORTING AFFIDAVIT

STATE OF MONTANA

County of Lewis & Clark

)
: ss.
)

Jesse Laslovich, Special Assistant Montana Attorney General and Special
Deputy County Attorney of Cascade County, Montana, being first duly sworn, moves
the Court for leave to file an Information charging the Defendant, KENNETH JAMES
HATZENBELLER (Hatzenbeller), with the following offenses committed in Cascade
County, Montana:

**COUNT I: FAILURE TO REGISTER AS A SECURITIES BROKER-
DEALER OR SALESPERSON**, common scheme, a felony, as specified in Mont. Code
Ann. §§ 30-10-201, 30-10-306, 45-2-101(8); **COUNT II: FAILURE TO REGISTER
SECURITIES**, common scheme, a felony, as specified in Mont. Code Ann. §§ 30-10-

1 202, 30-10-306, 45-2-101(8); **COUNTS III and IV: FRAUDULENT SECURITIES**
2 **PRACTICES**, a felony, as specified in Mont. Code Ann. §§ 30-10-301(1)(b), 30-10-
3 306; and **COUNT V: FRAUDULENT SECURITIES PRACTICES**, common
4 scheme, a felony, as specified in Mont. Code Ann. §§ 30-10-301(1)(b), 30-10-306, 45-2-
5 101(8).

6 Jesse Laslovich, after first being sworn upon oath, deposes and says, based on
7 information and belief, that investigative information compiled and provided to him by
8 Lynne Egan, Deputy Securities Commissioner and security analyst for the Office of
9 the Montana State Auditor. Commissioner of Securities and Insurance (CSI),
10 demonstrates probable cause to believe that the Defendant has committed the offenses
11 charged. The investigative information relied upon by affiant to support probable
12 cause is as follows:

13 1. The CSI has a duty to investigate alleged violations of the Securities Act
14 of Montana found in Title 30, Chapter 10 of the Montana Code Annotated. The Act is
15 to be construed to protect the investor, persons engaged in securities transactions, and
16 the public interest. Mont. Code Ann. § 30-10-102(1). Any person who willfully
17 violates any provision of parts one through three of Montana Code Annotated Title 30,
18 chapter 10, is criminally liable for the violations. The same is true if a person violates
19 any rule promulgated pursuant to Title 30, Chapter 10, parts 1 through 3 of the
20 Montana Code Annotated. Mont. Code Ann. § 30-10-306.

21 2. Egan is a forensics accountant who has worked for the CSI for over 22
22 years as a Securities Examiner and Deputy Securities Commissioner. Prior to her
23 work at the CSI, she was an income tax compliance officer for the Montana
24 Department of Revenue for 2 years and worked for D.A. Davidson for 10 years as an
25 operations manager. She has served as an expert witness in many securities-related

1 cases and has extensive training and experience relating to securities regulation.

2 3. Any person acting as a broker-dealer of securities in Montana must be
3 registered as such. Mont. Code Ann. §§ 30-10-103(1), -103(22), -103(24), 30-10-201.
4 Egan's review of the Financial Industry Regulatory Authority's (FINRA) Central
5 Registration Depository (CRD), which maintains registration filings for all broker-
6 dealer firms and individuals associated with the firms, showed that Defendant is not
7 now, nor has he ever been, registered in any capacity with the CSI or FINRA. Her
8 review of the Securities and Exchange Commission's Electronic Data Gathering,
9 Analysis, and Retrieval (EDGAR) database indicates that Defendant is not now, nor
10 has he ever been, registered with the Securities and Exchange Commission. None of
11 the exemptions from the registration requirement apply to Defendant. Mont. Code
12 Ann. § 30-10-105.

13 4. Egan's investigation of this matter started in October 2105 with a
14 complaint by J.H.1 and J.H.2. J.H.1 explained to Egan in person that he and his wife
15 (J.H.2) had given money to Defendant since October of 2013 for investment and profit.
16 In return, Defendant gave them a "Promissory Note" which identifies the lenders
17 (J.H.1 and J.H.2), the borrower as "Shoot the Moon III, LLC," and the guarantors as
18 Defendant, Gregory S. Tierney, and John W. Bloemendaal. All of the persons
19 identified in the note reside in Great Falls, Montana. The note provides an interest rate
20 of 10 percent per annum and repayment terms, including weekly installments.
21 Defendant signed the Note for Shoot the Moon III, Inc., as well as Tierney and
22 Bloemendaal. It is dated October 18, 2013. The note constitutes a security as
23 specified in Montana Code Annotated Section 30-10-103(22).

24 5. It is unlawful for a person to offer or sell any security in this state that is
25 not registered with the CSI or subject to one of the exemptions stated in law. Mont.

1 Code Ann. § 30-10-202. In this case, the promissory notes issued by Defendant for the
2 Shoot the Moon III, Inc., entity were not registered with the CSI or subject to any
3 exemption from registration.

4 6. Investigation revealed Shoot the Moon III, Inc. (the entity that issued all
5 of the notes to J.H.1 and J.H.2) is one of several entities with names including "Shoot
6 the Moon." Generally, the entities are engaged in business endeavors including realty
7 and restaurants in Montana, Idaho, and Washington. Defendant is listed as the
8 managing member of sixteen Shoot the Moon entities with the same business address
9 in Great Falls, Montana, registered with the Montana Secretary of State as of May
10 2016.

11 7. Montana Code Annotated Section 30-10-301 states:

12 (1) It is unlawful for any person, in connection with the offer,
13 sale, or purchase of any security, directly or indirectly, in, into, or from
this state, to:

- 14 (a) employ any device, scheme, or artifice to defraud;
15 (b) make any untrue statement of a material fact or omit
to state a material fact necessary in order to make the statements made,
16 in the light of the circumstances under which they are made, not
misleading; or
17 (c) engage in any act, practice, or course of business that
operates or would operate as a fraud or deceit upon any person.

18 In an effort to implement this statute, Administrative Rule of Montana 6.10.401 was
19 promulgated. It provides in relevant part:

20 (1) For purposes of 30-10-201 and 30-10-301, MCA, fraudulent and
21 unethical practices means, but is not limited to: . . .

22 (c) recommending to a customer the purchase, sale, or exchange
of a security without grounds to believe that the transaction or
23 recommendation is suitable for the customer based upon reasonable
inquiry concerning the customer's investment objectives, financial
situation and needs, and any other relevant information known by the
broker-dealer; . . .

24 (g) failing to segregate a customer's fully paid securities or
25 securities held in safekeeping; . . .

(j) failing to furnish to a customer purchasing securities in an

1 offering, no later than the date of confirmation of the transaction, either
2 a final prospectus or a preliminary prospectus and any additional
documents, which together include all information set forth in the final
prospectus; . . .

3 or
4 (u) engaging in other conduct such as forgery, embezzlement,
nondisclosure, incomplete disclosure or misstatement of material facts,
or manipulative or deceptive practices.

5 8. On February 18, 2015, a new subsection of Mont. Code Ann. § 30-10-
6 306 (the penalty section for fraudulent securities practices) took effect. That
7 subsection provides: "(2) A person who willfully violates 30-10-301 with knowledge
8 that the violation would affect a vulnerable person shall upon conviction be fined not
9 more than \$20,000 or imprisoned not more than 20 years, or both." "Vulnerable
10 person" means:

- 11 (a) a person who is at least 60 years of age;
- 12 (b) a person who suffers from mental impairment because of
frailties or dependencies typically related to advanced age, such as
dementia or memory loss; or
- 13 (c) a person who has a developmental disability as defined in
53-20-102.

14 Mont. Code Ann. § 30-10-103(25).

15 9. Defendant provided J.H.1 and J.H.2 with no disclosure regarding any
16 Shoot the Moon entity; instead he told them that the investment was one hundred
17 percent safe and guaranteed. They did not receive any documents or information
18 showing a description of the Shoot the Moon entities, their financial condition, or risk
19 factors associated with the issuer (shown as "borrower" on note). Defendant did not
20 consider factors necessary to determine suitability of a particular security or
21 investment by a particular person investing money.

22 10. J.H.1's and J.H.2's initial payment to Shoot the Moon III, Inc. was
23 \$100,000 on October 18, 2013. From then through September 18, 2015, they gave
24 Defendant \$525,000 in 16 additional transactions. They also purchased additional
25 promissory notes with money paid to them by Defendant pursuant to prior notes. Over

1 time, the promissory notes changed. Starting in the year 2014, they did not show any
2 guarantors.

3 11. Starting in September 2015, payments by Defendant to J.H.1 and J.H.2
4 were not complete. They contacted Defendant and received two checks from him on
5 October 5, 2015; both checks were returned to them without payment, due to
6 nonsufficient funds. Thereafter, Defendant's son, Mitch Hatzenbeller, told them that
7 Shoot the Moon was declaring bankruptcy in October 2015. Defendant owes J.H.1
8 and J.H.2 an outstanding principal total of \$398,000, which represents their life
9 savings. J.H.1 is over 70 years old and J.H.2 is over 60 years old. Between February
10 19, 2015, and September 10, 2015, J.H.1 and J.H.2 gave Defendant \$350,000.

11 12. Bank records obtained pursuant to an investigative subpoena show that
12 the checks signed by J.H.1 or J.H.2 to "Shoot the Moon" were deposited in various
13 accounts in the Prairie Mountain Bank in Great Falls, Montana. The money was put
14 into an account with money from other investors and treated as though it was
15 Defendant's. Defendant would transfer the money to and from various bank accounts
16 on a regular and frequent basis, with no apparent recordkeeping specific to each
17 investor.

18 13. R.G. is over 70 years of age. He was told of the opportunity to invest in
19 Shoot the Moon III by Defendant. He was persuaded to invest by Defendant's
20 representations that the restaurants and businesses were doing very well, as well as the
21 fact that R.G.'s brother had invested and that two physicians were guarantors of the
22 notes. R.G. gave Defendant \$500,000 on May 29, 2015. On August 21, 2015, R.G.
23 gave Defendant the money returned pursuant to the first promissory note; in exchange
24 for a second promissory note, R.G. gave Defendant \$500,000. He received no
25 financial statements, no risk factors, and no explanation of how his investment

1 proceeds would be used. He was not told that his money might be co-mingled with
2 money of other investors or in accounts related to other endeavors. He was enticed by
3 Defendant to invest in August 2015 by Defendant's agreement to increase the interest
4 rate from 13 percent to 13.5 percent. R.G. told the CSI analyst that the money he gave
5 Defendant represents his retirement savings and that he must now change his
6 retirement plans because of the lack of repayment and profit. Defendant owes R.G.
7 \$480,000 in principal on his second promissory note.

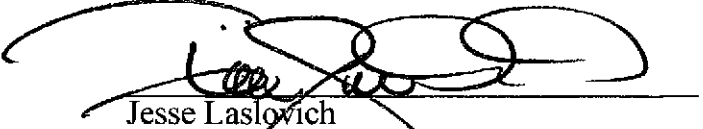
8 14. In addition to the money given to Defendant by J.H.1, J.H.2, and R.G. as
9 described above, Defendant took money from thirteen individuals (D.A., L.A., D.C.,
10 M.D., J.G., L.H., T.H., A.H., T.S., K.S., P.W., J.H.1, and J.H.2) from October 1, 2013,
11 through October 31, 2015, totaling over \$2,850,000. He gave them promissory notes
12 in exchange, but after September 2015, he failed to pay them pursuant to the notes and
13 the thirteen individuals are owed over \$1,860,000. Most were persuaded by the fact
14 that that two physicians were guarantors of the notes and by Defendant's
15 representations that the restaurants and businesses were doing very well. None
16 received information regarding the entities in which they were allegedly investing.
17 None received statements, tax documents, or prospectus reports. They were paid
18 weekly for a period of time, but then payments stopped and they learned of the
19 bankruptcy.

20 15. During sworn testimony given by Defendant on December 17, 2015,
21 Defendant described his handling of the Shoot the Moon businesses and his gathering
22 of money from various people, including those referenced above. He admitted that
23 when soliciting or accepting the money for Shoot the Moon III or issuing a promissory
24 note, he would give them no information regarding the businesses or the businesses'
25 financial circumstances relevant to solvency or the ability to profit. He admitted that

1 he pooled all money received from various sources and used it for all of the businesses.
2 as determined necessary on a daily basis.

3 Based on these facts, the affiant believes probable cause exists that the Defendant,
4 KENNETH JAMES HATZENBELLER, has committed the alleged offenses.
5 Accordingly, the affiant moves this Court for leave to file the requested Information.

6 DATED this 20th day of June, 2016.

7
8 
9 Jesse Laslovich
Special Assistant Montana Attorney General
Special Deputy Cascade County Attorney

10
11 SUBSCRIBED AND SWORN TO before me this 20th day of June, 2016
12 by Jesse Laslovich.

